

### REMARKS

No claims are amended, claims 1-35 are canceled, and claims 36-55 are added; as a result, claims 36-55 are now pending in this application.

No new matter has been added by new claims 36-55. Support for new claims 36-55 is found throughout the specification, including but not limited to the specification at paragraphs 0024-0054. Additional support for claim 55 is found for example but not limited to the specification at paragraphs 0056-0059.

### §103 Rejection of the Claims

Claims 1-35 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Esposito et al. (U.S. 6,587,838, hereinafter "Esposito").

Claims 1-35 are canceled, so the rejection of claims 1-35 is moot.

### New Claims 36-55

New claims 36-55 include subject matter not disclosed or suggested by, and thus are patentable over, Esposito. By way of illustration, independent claim 36 recites:

the at least one back-end server operable to search a database maintained by the network-based transaction facility, and **to generate a commingled list of items** offered for sale based on the request and on data stored within the database, and **to communicate the commingled list through the plurality of front-end servers and over the network to the client machine, wherein the commingled list includes items being offered for sale by any combination of an auction-type price setting process and a fixed price setting process.** (Emphasis added).

Thus, independent claim 36 includes "the at least one back-end server operable to generate a commingled list of items offered for sale . . . to communicate the commingled list through the plurality of front-end servers and over the network to the client machine."

In contrast to independent claim 1, Esposito concerns "providing *real-time notification to vendors* of purchaser requirements in a heterogeneous network environment,"<sup>1</sup> wherein, "Users interact with plurality of client computers 102 in order to view information about products stored in product database 120."<sup>2</sup> (Emphasis added). However, there is no disclosure or suggestion in Esposito of the subject matter as quoted above from independent claim 36.

Further, Applicants maintain that Esposito actually teaches away from this subject matter as quoted above from independent claim 1. According to Esposito:<sup>3</sup>

**"In a step 410, a user at one of the plurality of client computers is presented with a plurality of product options and services from which to make a selection. Then, in a step 412, responsive to user input indicating a particular product from a menu, the user is provided product information, including photographs, retrieved from the product database 120. In a step 414, a product selection and user specific information, including geographic information, is received from the user. In a step 416, a purchase request is transmitted to the vendor computer over the public packet switched communications network. Then, in a step 418, the purchase request is analyzed by the vendor computer to determine the product and proximity information of the user. Incoming information is examined to determine proximity information such as the area code or postal code of the user. This information determines which wireless service provider region and terminal accounts can be selected to receive vendor notification. In a step 420, based upon the proximity information, a plurality of vendors is selected from the product database 120, each of the vendors being in close proximity to the user. In a step 422, a wireless region and account information associated with each of the plurality of selected vendors is determined. Next, in a step 424, information about the user is recorded in the customer database 122. In a step 426, vendor notification message 50 is transmitted to each of the selected vendors via the wireless network 108, based upon the wireless region and account information."** (Emphasis added).

Thus, the description of the Esposito system is concerned with transmitting *to vendor computers* the product selections of a user. This fails to disclose or suggest, and actually teaches

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<sup>1</sup> See Esposito at column 1, line 32-34.

<sup>2</sup> See Esposito at column 3, lines 28-30.

<sup>3</sup> See Esposito at column 4, line 55 through column 5, line 15.

away from, the above quoted subject matter from independent claim 36 including, "to communicate the commingled list through the plurality of front-end servers and over the network to the client machine," as required by independent claim 36. The purpose of the vendor notification of Esposito, according to the description in Esposito, is to see "if any of the one or more vendors can complete a purchase and sale transaction with the user, the vendor can contact the user directly."<sup>4</sup>

The Esposito description also fails to disclose or suggest additional quoted subject matter of independent claim 36, wherein independent claim 36 includes, "wherein the commingled list includes items being offered for sale by any combination of an auction-type price setting process and a fixed price setting process."

Thus, independent claim 36, and each of claims 37-45 that depend from independent claim 36, are patentable in view of any documents cited in the Final Office Action.

In another illustration of patentable subject matter included in claims 36-55, independent claims 46 and 55 each recite:

"searching the database to determine if any items being offered for sale by the seller meet the search criteria, wherein the items offered for sale are associated with a plurality of transaction types including one of an auction price-setting process and a fixed price-setting process;

generating a commingled list of located items offered for sale by the seller that meet the search criteria; and

communicating the generated commingled list to the buyer."

For reasons analogous to those stated above with respect to independent claim 36, independent claims 46 and 55, and claims 47-54 that dependent from independent claim 46, are patentable in view of any documents cited in the Final Office Action.

Applicants respectfully request consideration and allowance of claims 36-55.

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<sup>4</sup> See Esposito at column 3, lines 44-46.

Reservation of Rights

In the interest of clarity and brevity, Applicants may not have addressed every assertion made in the Final Office Action. Applicants' silence regarding any such assertion does not constitute any admission or acquiescence. Applicants reserve all rights not exercised in connection with this response, such as the right to challenge or rebut any tacit or explicit characterization of any reference or of any of the present claims, the right to challenge or rebut any asserted factual or legal basis of any of the rejections, the right to swear behind any cited reference such as provided under 37 C.F.R. § 1.131 or otherwise, or the right to assert co-ownership of any cited reference. Applicants do not admit that any of the cited references or any other references of record are relevant to the present claims, or that they constitute prior art. To the extent that any rejection or assertion is based upon the Examiner's personal knowledge, rather than any objective evidence of record as manifested by a cited prior art reference, Applicants timely object to such reliance on Official Notice, and reserve all rights to request that the Examiner provide a reference or affidavit in support of such assertion, as required by MPEP § 2144.03. Applicants reserve all rights to pursue any cancelled claims in a subsequent patent application claiming the benefit of priority of the present patent application, and to request rejoinder of any withdrawn claim, as required by MPEP § 821.04.

**CONCLUSION**

Applicants respectfully submits that the claims are in condition for allowance, and notification to that effect is earnestly requested. The Examiner is invited to telephone Applicants' representative at (612) 371-2132 to facilitate prosecution of this application.

If necessary, please charge any additional fees or credit overpayment to Deposit Account No. 19-0743.

Respectfully submitted,

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Date

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By

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**CERTIFICATE UNDER 37 CFR 1.8:** The undersigned hereby certifies that this correspondence is being filed using the USPTO's electronic filing system EFS-Web, and is addressed to: Mail Stop RCE, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on this 21 day of August, 2008.

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